

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. MCI WORLDCOM, INC., Respondent.	DOCKET NO. FCU-03-21
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ORDER REGARDING MOTION FOR CLARIFICATION

(Issued July 1, 2004)

On June 22, 2004, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a supplement to its motion for discovery deadline and request for expedited ruling. In its supplement, the Consumer Advocate stated its data requests 3 and 6, which had been submitted to MCI WorldCom, Inc. (MCI), sought information regarding compensation of the telemarketer involved in this case, and data request number 24 requested personnel records of the telemarketer, including, but not limited to, records of compensation and quality control training attended by the telemarketer. The Consumer Advocate stated: "Accordingly, with respect to data requests nos. 3 and 6, OCA seeks an expediting ruling directing MCI by a time certain to provide a specific and complete answer to the question how Debra Johnson was compensated as of November 16, 2002. With respect to data

request no. 24, OCA seeks an expedited ruling directing MCI by a time certain to produce all personnel records on Debra Johnson, including but not limited to records regarding compensation of Debra Johnson and records regarding quality control training attended by Debra Johnson."

On June 23, 2004, a conference regarding scheduling was held in the Utilities Board offices. Mr. Craig Graziano was present representing the Consumer Advocate. Mr. Bret Dublinske was present representing MCI. The parties discussed whether there was a need to postpone the hearing, whether MCI needed additional time to respond to the Consumer Advocate's supplement, and several discovery requests by the Consumer Advocate. The undersigned made a number of rulings during the conference and issued an order on June 24, 2004, setting forth the rulings that had been made during the conference. The order denied the Consumer Advocate's request for the telemarketer's entire personnel file, but ordered MCI to turn over a number of items from the personnel file. In addition, the order included, among others, the following rulings:

2. On or before July 1, 2004, MCI will provide the following additional detail regarding the answers to data requests 3 and 6 to the Consumer Advocate and will file a copy as a pre-filed exhibit. Using the answer to data request 3, MCI will provide an example that shows specifically how Debra Johnson was compensated. The answer will plug numbers into the basis for compensation and show, for example, how her salary was calculated for a typical day, pay period, or month. MCI will provide a more detailed, thorough answer to data request 6 that includes an example of how she was compensated. If the Consumer Advocate has follow-up questions regarding this information, it will ask them at the hearing rather than submitting additional pre-hearing questions to MCI.

5. Once it receives Ms. Johnson's personnel file, MCI will voluntarily provide a copy of her resume, employment application, and any compensation records that exist in the personnel file to the Consumer Advocate. MCI has requested the personnel file from Reese twice, and will ask Reese when it will provide the file. If MCI cannot obtain the personnel file and provide the information to the Consumer Advocate by July 1, 2004, MCI will file an explanation of why it has not been able to obtain it, the efforts made to obtain it, and a statement of when it can provide this information to the Consumer Advocate.

8. If the Consumer Advocate has follow-up questions based on the information it receives from MCI, Mr. Graziano will ask them at the hearing rather than submitting additional pre-hearing questions to MCI. If the Consumer Advocate believes follow-up questions must be asked prior to the hearing, Mr. Graziano will request a conference call with the undersigned to discuss the matter. There will be no new discovery requests made by either party.

On June 24, 2004, the Consumer Advocate filed a motion for clarification of the order and request for expedited ruling. The Consumer Advocate stated it had attempted since March 4, 2004, to learn the basis upon which the telemarketer was compensated, and it sought clarification of the first sentence of paragraph 5 of the order to conform to what it understood was concluded at the conference. Specifically, the Consumer Advocate sought removal of the qualifier "in the personnel file" as it relates to compensation records for the telemarketer. The Consumer Advocate stated compensation records may not be in the personnel file and the reasons for compelling production do not depend on the file in which the records are placed.

On June 29, 2004, MCI filed a reply to the Consumer Advocate's motion. MCI stated the order required it to provide an example that shows exactly how the

telemarketer is compensated and a more detailed answer to data request number 6, and nothing in the order required it to provide compensation records. MCI stated its attorney's recollection that payroll records were not discussed in connection with data requests 3 and 6, and it is improper for the Consumer Advocate to seek records outside the scope of the original request. MCI further stated it was counsel's recollection that discussions regarding the telemarketer's compensation records instead arose during the discussion regarding the Consumer Advocate's request for the telemarketer's personnel file in data request 24. MCI stated that at the conference, the undersigned administrative law judge worked with the parties to determine what portions of the personnel file might be relevant, and at that time, the Consumer Advocate suggested that payroll records would be one type of record it was seeking. MCI stated as a result, MCI was required to produce certain documents from the personnel file, including compensation records. MCI stated that because the ruling was in response to the Consumer Advocate's request for the telemarketer's personnel file, it was appropriate that the decision did not exceed the scope of the request. MCI stated the Consumer Advocate did not request compensation records in its data requests, but only the personnel file. Therefore, MCI requested that the Consumer Advocate not be allowed to broaden its original request. MCI further stated the Consumer Advocate has had two years to seek information and allowing it to broaden its request is akin to seeking new discovery after the undersigned has ruled discovery must stop so the parties have a fair opportunity to prepare for hearing. MCI further stated it had received the

telemarketer's personnel file, the file contains the rate of pay and documents indicating raises were received, and MCI would provide the documents to the Consumer Advocate as ordered.

At the conference held on June 23, 2004, the undersigned believed the only discovery requests being discussed were more complete answers to data requests 3 and 6 and the Consumer Advocate's request for the telemarketer's personnel file. Therefore, the ruling included only the telemarketer's compensation records in the personnel file. As sometimes happens, differing parties to a conversation can have a different understanding as to what was meant during the conversation. The undersigned and MCI's attorney understood the conversation and resulting ruling to include only those compensation records in the personnel file. Mary Whitman, a Utilities Board attorney, sat in on the conference and took notes. The notes indicate that the conversation was about the telemarketer's personnel file and that MCI's attorney stated MCI would not object to turning over compensation records if they were in the personnel file. During the conversation, the Consumer Advocate's attorney did not object or state he was requesting all compensation records regardless of whether they were in the personnel file or not. However, the Consumer Advocate's attorney apparently understood the conversation and resulting ruling made during the conference to be about all compensation records, regardless of whether they were in the telemarketer's personnel file or not. Therefore, in the motion filed the day after the conference, he sought clarification of the written ruling when it stated it was limited to compensation records in the personnel file.

Due to this misunderstanding, a ruling must be made regarding whether compensation records in addition to those in the personnel file must be provided to the Consumer Advocate. The hearing in this case is set for July 14, 2004. The undersigned has ruled that further questions must be asked at hearing and no new discovery requests may be made by either party. However, data request number 24 states: "Please give the dates of Debra Johnson's employment with Reese Brothers and produce copies of all personnel or other records or documents regarding Debra Johnson that MCI has either generated on its own or obtained from Reese Brothers either in the ordinary course of business or in the course of investigating Dr. Kilaru's complaint, including, but not limited to, records of quality control training attended by Debra Johnson. Referring to the testimony of Jim Ray, Page 5, please identify all records or documents relating to Debra Johnson's employment that were received by Jim Ray." This data request is written broadly enough so it could be interpreted to include compensation records of Ms. Johnson that MCI has either generated on its own or obtained from Reese Brothers either in the ordinary course of business or in the course of investigating Dr. Kilaru's complaint, regardless of whether they are in Ms. Johnson's personnel file or not. Since the Consumer Advocate submitted this data request to MCI on June 11, 2004¹, prior to the ruling that there would be no new discovery requests made by either party, it cannot be said this request violates the prohibition on new discovery.

¹ See "OCA Exhibits" filed June 21, 2004.

It does not appear that requiring MCI to turn over compensation records relating to Ms. Johnson's employment that are already in MCI's possession would be overly burdensome or unreasonable. However, data request no. 24 did not ask for compensation records relating to Ms. Johnson's employment that are not in MCI's possession, and the Consumer Advocate cannot expand the data request through its motion for clarification. Additionally, it would be burdensome and unreasonable to require MCI to obtain additional records not currently in its possession at this late date. Furthermore, it would violate the ruling that there be no new discovery requests.

IT IS THEREFORE ORDERED:

1. On or before July 7, 2004, MCI must provide copies of all compensation records regarding Ms. Johnson that MCI has either generated on its own or obtained from Reese Brothers either in the ordinary course of business or in the course of investigating Dr. Kilaru's complaint to the Consumer Advocate.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 1st day of July, 2004.